

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CRYE PRECISION, LLC, and
LINEWEIGHT LLC,

Plaintiffs,

v.

DURO TEXTILES, LLC,

Defendant.
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CIVIL ACTION NO 15-cv-1681 (DLC)

**DECLARATION OF JOHN MACHADO
IN SUPPORT OF DURO TEXTILE'S
MOTION FOR SUMMARY JUDGMENT**

I, John Machado, of full age and upon my oath, hereby declare as follows:

1. I am Director of Military Sales for Duro Textiles, LLC ("Duro"). As part of my job responsibilities, I manage and administer Duro's contracts and orders for the purchase of Duro products by and for the U.S. Government, including fabrics incorporating the camouflage pattern known as "Scorpion W2," which is also called "Operational Camouflage Pattern" ("OCP").

2. I respectfully submit this declaration in support of Duro's Motion for Summary Judgment.

3. All of Duro's orders for the purchase of fabrics incorporating the Scorpion W2 camouflage pattern ("Scorpion W2 Products") are associated with prime contracts awarded by the United States government.

4. Duro does not sell any Scorpion W2 Products to commercial customers for commercial use. That is, to the extent Duro sells Scorpion W2 Products to commercial customers, the Scorpion W2 Products are intended for delivery to the United States in connection

with government prime contracts. The government orders Scorpion W2 Products from prime contractors, and those prime contractors and/or their subcontractors specifically order Scorpion W2 Products from printers including Duro.

5. The documents attached hereto as Exhibits 1 – 6 are true and correct copies of the purchase orders Duro has received for Scorpion W2 Products and the associated government contracts:

- a. Attached hereto as Exhibit 1 is a true and correct copy of a purchase order from Proper International, Inc. to Duro dated January 14, 2015 (the “Propper PO”). The Propper PO refers specifically to the “Operational Camouflage Pattern” and “OCP.”
- b. The Propper PO was issued pursuant to a subcontract between Propper and PENTAQ, in connection with certain prime contracts between the Defense Logistics Agency – Troop Support (“DLA-TS”) and PENTAQ (Contract Nos. SPM1C1-13-D-1036, -1073, and -1074 PENTAQ).
- c. Propper has informed Duro that it will be issuing a revised PO to reflect the fact that this PO will instead be used to fulfill Tullahoma Industries, LLC’s prime contract. A true and correct copy of the Tullahoma Prime Contract (Contract No. SPM1C1-13-D-1050) is attached hereto as Exhibit 2.
- d. Attached hereto as Exhibit 3 is a true and correct copy of a purchase order from American Apparel, Inc. to Duro dated January 5, 2015 (the “American Apparel PO”). It calls for a specific quantity of the “OCP” “SCORPION W2’ pattern.”

- e. The American Apparel PO was issued pursuant to American Apparel's prime contract with the DLA-TS (Contract No. SPM1C1-12-D-1038). A true and correct copy of the American Apparel Prime Contract is attached hereto as Exhibit 4.
- f. Attached hereto as Exhibit 5 is a true and correct copy of two purchase orders from Blind Industries and Services of Maryland to Duro dated October 31 and December 1, 2014 (the "BISM POs"). The BISM POs likewise specifically order "OCP."
- g. The BISM POs were issued pursuant to the prime contract between DLA-TS and Federal Prison Industries, Inc. (d/b/a UNICOR) (Contract No. SPM1C1-13-D-F505). A true and correct copy of the BISM Prime Contract is attached hereto as Exhibit 6.

6. Based on my communications with the prime and subcontractors to which Duro is selling Scorpion W2 fabrics for the government, I am aware that the government is currently allowing the costs that other printers are paying to Crye for royalties on Scorpion W2 fabric to be included as a line item passed up through those prime and subcontractors. Duro is not including royalties on Scorpion W2 to Crye as one of its costs.

7. Sales of camouflage fabric to the U.S. Military constitute a major part of Duro's business, and preventing Duro from continuing to sell Scorpion W2 to the Army would significantly threaten the viability of Duro, a 65 year old company, and its manufacturing jobs.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of October, 2015, in FALL RIVER, MA.


John Machado

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